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AN
ADDRESS

ON

INTERSTATE RAILWAY TRAFFIC,

AT THE

TENTH ANNUAL MEETING

OF THE

NATIONAL BOARD OF TRADE,

DECEMBER 11, 1879.

BY SIMON STERNE,

MEMBER OF THE NEW YORK BOARD OF TRADE AND TRANSPORTATION.

BOSTON :

TOLMAN & WHITE, PRINTERS, 383 WASHINGTON STREET.

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AN ADDRESS

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INTERSTATE RAILWAY TRAFFIC.

During the session of the National Board of Trade in Washington, on the 10th, 11th and 12th of December, 1879, the questions of Interstate Railway Traffic, and Railway Management under United States Law, came up for consideration at the instance of the New York Board of Trade and Transportation and the Boston Board of Trade.

It was voted to consider these two propositions together.

Mr. THURBER, of New York: I desire to offer a resolution which I have drafted, to this effect:

Resolved, That in the opinion of this Board it is desirable to secure national legislation upon interstate commerce by railroad, and that said legislation should embody the following provisions: First, to raise a special commission or tribunal to secure uniformity and publicity in railway accounts, and publicity of railway contracts and transactions; Second, to enforce provisions securing uniformity of rates and classifications under like circumstances, and relative quality where circumstances differ; Third, to secure publicity of rates and prohibition of sudden and arbitrary changes; Fourth, to secure the prevention of extortionate charges, and of personal or local favoritism.

I should have been glad under some circumstances to speak upon this subject; but Mr. Sterne, a member of the New York Board of Trade and Transportation, who has for several years been doing excellent work in connection with this subject, and in the most disinterested manner has advocated legislation designed to secure substantial justice to the public, has been induced by us to come here, very much against his inclination and at great personal inconvenience. I would therefore ask Mr. Sterne to touch upon the various points mentioned in my proposition, instead of doing so myself.

MR. STERNE, of New York: *Mr. President:* Mr. Thurber has quite truly stated that I came here with considerable reluctance. I am a member of the Board of Trade and Transportation, and have been so since its organization; but I felt that it would be regarded to some degree as an intrusion for a man not strictly related to trade, but connected with the legal profession, to present his views at large here, except upon a special occasion, or when a special question, such as this, is under consideration.

Some of you, gentlemen, are probably aware that on behalf of the Chamber of Commerce and Board of Trade, I represented, as counsel, before a Legislative Committee of Investigation, the views of the New York merchants upon railway policy in the State of New York. This enquiry extended over a period of eight months, and has been described by railway people as the most thorough and searching investigation that has ever taken place in this country, upon any subject relating to trade or commerce. Therefore, even if I had not been prepared by previous study to speak upon a matter of this character, the experience and buffetings that I have had and met with for the past eight months upon this subject would, of themselves, to a considerable degree, fit me to say a few words upon the question which is now before the Board.

Why is it that we have a railway problem upon our hands while we have not a breadstuff problem, a petroleum problem, nor, indeed, a problem in reference to any other occupation or private enterprise? The answer is, that we have from the very outset, from the time the railway system took its origin in this country and in England, misunderstood as a people the bearing, the power, and the consequences of giving a public highway into private hands; and we did not suppose—and very naturally we did not suppose—that in

granting railway franchises we were in reality not only giving a public highway into private hands but also the exclusive transportation over it. We had nothing to guide us. There had been nothing like it in the history of the world; and it was for the first time that the owner of a road became the sole transporter over that road, because all other highways that had been built, whether by Government or in part by Government, and in part or wholly by private enterprise, were built simply for the ownership and control of the highway; and the vehicles that travelled thereon, belonged to private owners and became subjects of private competition, to transport the goods over the highways, so that the analogy of the turnpike did not help us, because the turnpike was simply the ownership of the road, while the goods that were transported over the turnpike went over it in private wagons or vehicles over which the turnpike company had no control except to fix uniform tolls for the use of the road only.

The analogy of the canal gave us no light, because there again the canal company, when it was in private hands, became simply the owner of a canal, while the boats that passed through the canal were provided and propelled by private enterprise, remained private property, and were entirely separate from the canal company. So we, in utter ignorance of the consequences of chartering corporations which would at the same time be the sole transporters over the road, legislated upon the basis or plan as if private carriages could go over the new road, and that heavy freights never, by any possibility, would be carried over it. You will find, Mr. President, in all the early railroad charters in this country, and in England, provisions incorporated by which the right of a citizen to put his private carriage upon the new roadway was secured, on payment of certain tolls; and you will also find, by a report made in 1833 by four of the then leading engineers in the State of New York to the Legislature of the State, in answer to an enquiry in reference to the future development of this form of highways, these engineers substantially said that they would be exceedingly useful for the carrying of passengers over level plains, but that for the purpose of carrying freight they were not at all to be considered in comparison with the water-ways, and that there was, therefore, no necessity for fixing any limit in regard to freight charges which would never be made. It is not to be wondered at, therefore, that our legislators went wrong, and our people went wrong, and that

we have now upon our hands a railway problem of the first magnitude. I do not propose in what I have to say, to utter an unkind word of the men who control our great public highways called railways, which have, according to Mr. Nimmo's report of 1877, carried over eighty per cent. of the traffic going from the West to the East, and which now carry about seventy per cent. of the traffic East bound, and even a larger percentage of West bound traffic (because the West bound traffic being first-class is almost exclusively and wholly in the hands of the railways).

That that condition of things was not provided against is the fault of our people and our legislation—a fault which is easily explainable by the misapprehension already referred to—that we had nothing to guide us. Our ignorance was, therefore, very naturally taken advantage of by strong and intelligent men, who went into railroading as a business, in which to make as much money as they could, paying no more attention to the public than any man who goes into a private business; and, therefore, the railroad man is not to be blamed for making whatever he could out of his investments. Consequences to the public of the most serious and grave character have flowed from this, and have become aggravated to a degree no longer to be borne; but in legislating upon the subject we must bear in mind that we must be just to the citizens who have, through our own neglect, invested their moneys in these great enterprises upon a different theory than that which will hereafter prevail, and done so at our invitation as a people, to regard it exclusively as a matter of private enterprise. Therefore, the legislation that we want in the first instance is of the most conservative character, because we should avoid the bringing about of any condition of affairs which will permit private interests to say with justice to the public: “We were invited to enter into this business and put our money into it as a private enterprise, and you now put the whole burden upon our shoulders and take the whole benefit to *yourself*. We shall put no more money into enterprises which are subjected to that kind of control.” Such was the consequence of some of the Western legislation which decided to embody a hard and fast tariff in the bills creating a board of railroad commissioners, and which attempted to apply the strict rule of a *pro rata* freight toll for the shorter, compared with the longer distance. Now I believe that the adoption of provisions in any bill which would, in the first place, put into the

law a hard and fast tariff, not to be changed under any circumstances until the law-makers could again convene and be persuaded, or which would directly apply a *pro rata* freight schedule, without the slightest regard to terminal advantages, or without the slightest regard either to gradients or superior facilities between railroads, or any other questions which determine a freight charge, would necessarily be dangerous legislation, not only to the interests affected, but to the people at large, because it would work so badly as to cause distrust with it and thereby ensure its repeal, thus putting us back again to a condition worse than we were in at the outset, since it will create a feeling that legislation upon that subject is useless.

The reason why the railway question or the railway problem differs from every other problem, and why railroading can never be considered a private business is this: Competition applies in every case where, for the time being, in the individual instances, the supply is larger than the demand. To explain what I mean by this, I will give you an example:

If I want a hat, although all the hats that are wanted by the people, and all the hats the people want, may counterbalance each other (I mean the supply and demand be about equal); yet to each individual man who wants a hat there are practically a million more hats offered to him than he wants, and he therefore is perfectly free to choose. A man who wants a railroad train, or fifty men who want a railroad train from any one point to a given point, have not a million railroad trains to choose from. They generally have but one, which leaves at a stated period of time, and they must take that or none; and, therefore, the supply in that case is the very reverse of what it is in the instance of the demand for a hat. For in the case of the railroad there is but one to supply the want, and a million who want that particular service. In addition to that fact, in almost every other business the conditions are absolutely different. In every private business, the moment that excessive profits can be made, a very limited supply of additional capital drawn from other occupations would tend to create a competition. In a railroad you never can create competition without attempting to raise a sum of money so large as to make it a very serious question whether or not it can be raised, if a railroad to supply such a demand is already in existence; and then, when you have two or three, or even four or five, railroads from any point to another

given point, they never can be so multiplied but that the presidents of such railroads can get around a single table and determine upon either a pool or a combination which will fix a rate of freight from one point to another given point, which will pay an interest on all the capital invested in all the railways, thus imposing a burden in addition to that which had been already imposed by the existing railway, four times as great as would otherwise be necessary, simply because additional railways not demanded by the necessities of the case had been built.

Statistics gathered both in this country and in England, show there is not a single line of railway in the world (except those exclusively passenger railways in dense populations, such as the elevated roads in New York, or the underground railways in London), which is operated to a large percentage of its capacity. For instance, the New York Central Railway or the Pennsylvania road—the two roads operated more than any others in this country—are operated not above fifteen per cent. of the actual capacity of the roads for the carriage of trains with safety. Therefore, quite independent of the fact that the roads exercise the right of eminent domain which gives them a *quasi* public nature, the character of their business is such that we cannot expect competition for any long period of time between them, because combination is easy, and combination is more profitable than competition; and there is not the same freedom on the part of the buyer of the commodity of transportation as there is of the seller; consequently, the condition of freedom which lies at the very basis of competition does not exist; and, therefore, quite independently of the exercise of the right of eminent domain, and of the correlative duties that flow therefrom, the nature of the business requires regulation to secure the freedom which without regulation is denied. Strangely enough the railways themselves have, within the past few years, publicly abandoned even the pretence of competition between themselves, and have cast aside the whole basis of American legislation which proceeded on the principle of competition, and was founded upon that idea. Our free railway acts throughout the States, commencing with the State of New York in 1850, copied in all the States of the Union, were based upon the theory that there would be competition in railway management and railway building, precisely as in all other enterprises in this country, and that that competition would result in the most efficient service

at the lowest possible prices to the consumer. By a pooling and arbitrary division of the freights to be carried, and agreement as to rates, the twenty-seven leading railways of this country, combined under the management of Mr. Fink, have made a combination as close as though they had for all practical purposes become amalgamated under one board of control. Each railway company has thereby abandoned not only the right to make individually its own traffic rates, but also the right to carry such freights as may be offered to it; so that if I choose to send a particular package by the Erie Railway Company to a western point, whether it shall go to such particular point by the Erie Railway depends not upon my direction, but upon whether that road has already shipped freight to its allotted amount and reached the maximum, when it must send part of its traffic which comes to it under the pooling arrangement to some other road. Therefore, that important part of the whole railway system of this country which runs east and west from St. Louis to the sea shore, is combined under one arrangement, which has resulted in an absolute abandonment of competitive traffic by the railways themselves.

This confronts us with a power as great as, and indeed greater than, any of which we have any record; greater by far than has ever been permitted to exist unchecked and uncontrolled by proper legislation. Our Secretary, in his annual report, read yesterday, stated that there are now upwards of 80,000 miles of railway in this country, representing a capital of over \$4,500,000,000, which, when aggregated under one head, or a few heads and practically under one management, represents a power so formidable and so above and beyond the power of legislators, either State or national, as they are now organized, that it will break through and defeat any law which we may see fit to make, unless the people in their turn accumulate power to meet power. The railroad has outgrown all State limits and swept them (in so far as the railroads are concerned) out of existence, not only by the leasing of parallel lines and the leasing of lines running in conjunction, — lines running from Boston, Baltimore, Philadelphia and New York, to St. Louis, Cincinnati, Chicago and Louisville, — but by the traffic between them being so controlled by an arrangement as substantially to be equivalent to a pooling of the capital stock; so that in the place of five or six competing lines there is, practically, but one company, having five or six different sets of parallel rails,

having different local but the same through traffic ; and, therefore, in each one of the States each State finds itself powerless to control anything but a mere section of this vast body of roads. This condition is the basis of an argument that is constantly made, and made by the railroad managers themselves, against legislation in any particular section of the country, that it submits certain portions of a through line to a control which may place it at a disadvantage compared with other through roads ; and that, therefore, there should be some sort of simultaneous action, so that they shall be treated as a whole ; treated as they have practically become, — one body.

The difficulty of dealing with this question in the way suggested by the railroads, lies deep in the nature of things. In the first place the Democratic party, to which I have belonged since my majority, has to be educated upon that point. Last spring, when the Reagan Bill was under consideration, two of the most intelligent democrats in the House, representing our greatest commercial centre, opposed the bill, — not on the ground that it was in itself inexpedient and unjust, but mainly on the ground that it was an infraction of the principle of States' rights, which they claim to be one of the cardinal principles of the Democratic party, and must, therefore, be guarded against possible violation. You will find, therefore, no little difficulty, I apprehend, in procuring proper national legislation ; that difficulty arising somewhat from the desire to maintain the rights of the States to control the railways which have been the creatures of such States, and were organized by them exclusively.

Then there is another difficulty. Of course, where the railroad's operations are largely confined within State limits, it clearly is not within the power of Congress, without constitutional amendment, to regulate the rate of fare or the rate of freight, say from New York to Utica, or from Philadelphia to Pittsburg, or from Baltimore to Havre de Grace. So that a large domain must of course necessarily be left to the State governmental jurisdiction.

What has been the outcome of this absence of control in this country for the last thirty years ?

In the first place, we have had (and which is perhaps the worst evil of all) personal rates given to a favored few, which have enabled them to grow and prosper, while their neighbors declined and found their way out of business through the bankruptcy courts.

That is an abomination so great that I believe the common law, as it stands, would reach it. But an action against one of these powerful corporations is no joke; the injured man must be content, in addition to the pecuniary loss occasioned by the injury, to invest large sums of money without extraneous aid; to go, possibly, to the Supreme Court of the United States with his grievance before he can get redress; in any event, he will not be permitted to enjoy a decision in his favor until the court of last resort in his own State has been appealed to, to reverse such a decision; the expense this involves is so great that the injury that he has suffered seems ridiculously insignificant compared with the tax which the search for redress imposes, so that the existing tribunals are in this case substantially powerless to extend proper relief.

To such an extent has this matter of personal rates gone, that one witness whom I examined in New York, a very intelligent merchant, and I believe one of the largest foreign shippers of grain from New York to European cities, when under examination by me as to the rates he was paying, said: "I do not know what rates I have paid for the last three years, on the shipment of grain from the west to the east, because each shipment rested on its own contract." "Why," said I, "isn't there a tariff?" to which he replied, "I have heard of such a thing. The railways sometimes amuse themselves by making a tariff; but I make my own rate, and at my own time, and in my own way, for every shipment which I make." Here was a large shipper (that case is a sample of the rest) who utterly disregarded the tariff. He never paid any attention to it, but went into the railroad office and made his own personal rate; and whether it differed from the rate to anybody else he did not care, although, no doubt, he endeavored, if possible, to get the lowest rate. If he succeeded in getting a lower rate than other people, it placed him in a position of particular advantage in the markets of the world in the shipment of grain.

As to the local traffic, the evidence showed a condition of the freight office which is still worse, and that is, that one set of men, situated side by side with men in similar business in the interior towns of New York, would be compelled to pay thirty, forty and forty-five cents a hundred on the different classes of first, second, and third class freights, while their neighbor obtained a rate of ten or twelve cents a hundred upon all classes. Of course the difference was so great that it represented a commercial profit, and

the man who did not know at what rates his neighbor was getting his goods transported, finding his business languishing and his neighbor growing rich, attributed it to superior business advantages on the part of his neighbor, abandoned his occupation, or stayed in it until he was by the railway taxed out of existence, while the other man continued to flourish more and more as the business light of his neighbor was being extinguished. Here we see the development of an absolute power on the part of the railway, precisely analogous to and partaking of the same character as the taxing power when it is unequally distributed, of crushing out one man and building up another. I venture to say that such a power as that, exercised capriciously and with favoritism, makes it possible to the freight agent of a railway to constitute himself a special partner in every line of business in the United States, contributing as his share of capital to the business, the ability to crush out rivals. This is a power so great, and the consequences of it are so widespread, particularly for evil, that no community can prosper with such a power as that irresponsibly lodged in private hands, no matter who the men are who wield that power.

One of the justifications of the French revolution was the system known as *Fermiers Généraux*, which prevailed prior to the revolution, and by which a speculator purchased from the treasury of the French Government on the payment of, say, a million francs into the treasury, the right to tax a particular community in France. He invested his money in the right to tax, and he taxed them at his own sweet will, seeing to it that he did not tax them so utterly out of existence that the following year he could not make a good speculation in taxing them again. A power of the same character we have without stint, and without restraint, placed in the hands of our corporations. It is the power to tax, limited only by their own sense of personal interest not to tax to such a degree that they dry up the sources of taxation. And that is what railway men mean when they talk about charging what a thing will bear; and that is what they mean when they say, we charge arbitrary rates because we have no competition; and that is what they mean when they say that their rates go down by reason of competition, although they do not go down correspondingly to the changes that have taken place in prices in this country within the last eight or ten years.

Excepting England, other countries have been exempted very

largely from considering this so-called railway problem, because in those countries they never made the mistake that we and England did. They recognized the fact,—in countries which we are pleased to call paternal in their nature,—that the railway was a public highway; and they either built the railways with governmental money and operated them for the benefit of the public at large, or in giving these charters they guarded the exercise of rights that flowed therefrom with such jealousy, that the railway was practically and substantially at all times under governmental control.

In France, which has, next to Belgium and England, the most extensive railway system, in granting charters, they not only kept the control of the tariff at all times in the hands of the government, but also inserted in the charters that the whole railway property at the end of ninety-nine years shall fall into the possession of the state; and that too, without any payment for anything except the rolling stock, and for that they are to pay 60 per cent. of its value. They make further very stringent provisions that it shall not deteriorate in character during the latter part of the exercise of the franchise by these corporations. So that in about fifty years from now the French Government will fall heir to a property, by reason of this wise forethought, as valuable and as large, put in figures, as is now expressed by its national debt.

In Germany the railways were in part built by private enterprise and in part by the Government; but I see by a telegram which reached here yesterday, that that Government has determined now upon the purchase of all the great railways within its jurisdiction and territory, and a bill has passed their Legislature (the Landtag) so that substantially, within a few years, their railway system will be in the hands of the German Government.

England alone treated the railway very much as we treated it,—as a private enterprise; and on that basis invited private capital into it, so that for the past ten or fifteen years she has had upon her hands a problem somewhat analogous to the one which we are called upon to deal with now. To a considerable degree they have by intelligent treatment solved the problem. Numerous commissions have sat upon the question from 1844 up to the present time. The first commission was in 1844, and grew out of what is known as the Railway Crisis of that year. That commission occupied itself mainly with financial questions.

Mr. ROPES: Was that commission not appointed in 1847?

Mr. STERNE: I think the gentleman is right; the panic took place in 1845, and the commission was appointed in 1847, reporting in 1849.

Stringent provisions were then made to prevent the inflation of the railroad capital beyond the actual cost of construction, and now, in England, the capital account and the construction account are both equally true. They balance each other, and the actual capital account represents construction, and nothing else. Here, of course, as you are all very well aware, it represents to a large degree water, and to a very considerable, and perhaps to a larger degree, fraud, as was shown in evidence before the legislative committee that sat and took testimony in New York city in 1872, before which Mr. Gould testified that he carried about a million of dollars of legal expenses to india-rubber account, which india-rubber account found its way into the construction account of the Erie Railway.

An analogous condition of things was shown to exist in England; and by the passage of a law in 1847 or 1848, a great many amendments were made by which the stockholders' power over boards of direction was enlarged, and the whole shareholding interest could be more readily gathered together, and be more truly represented in the board of direction, and thus hold them to a more stringent and regular accounting.

The traffic question came up later, in 1852, when another commission sat; and that resulted in what is known as Lord Cardwell's Act of 1853, the main provision of which was to the effect that there shall be no discrimination except under different circumstances; that all shippers shall be treated alike; and that equal transportation facilities shall be afforded to all shippers. The necessity for that legislation was shown by evidence submitted to a Royal Commission, which sat previously to the passage of the act, exhibiting a condition of discrimination not nearly so oppressive nor so outrageous as we are suffering from, but yet, a condition which loudly called for relief. There was, however, no such state of things as we have had exhibited before the New York Legislative Committee in the infamous Standard Oil arrangement, demonstrating that by a combination of a few refiners and the trunk lines of railway, all other refining interests were crushed out of existence. The whole producing interest of that enormous product was placed at the mercy of one particular corporation

or combination of corporations and individuals, controlling not only the refining of the product, but the very production of twenty million barrels of oil a year; nothing parallel to this condition was ever known to exist in England, and would not have been tolerated for an instant, even, without the aid of the Cardwell Act, as its judges would, as against such oppression, have found a remedy at common law. Even after the Cardwell Act the railway question was as yet so far from a solution that, in 1857, Lord Chief-Justice Campbell felt himself authorized to say, in the House of Lords, that he felt assured that there was a necessity for a special tribunal to supervise the railway system, and to pay attention to and take heed of the complaints arising from the oppressions of that enormous power; because he felt at liberty to say that the various courts over which he had presided were not only inadequate to deal with the subject on account of want of technical knowledge, but the expenses attending railway litigation were such, as all railways had their counsel employed by the year and every petty case was carried up to the House of Lords, that the redress offered by the English common law against railway corporations, except in accident cases, was an insult rather than a relief; because it was an inducement to enter into endless litigation, involving enormous expense, and with doubtful results.

No close attention was thereafter paid to the railway question there until a considerable number of years later, when, in 1867, a commission was appointed to consider the subject once more; but still it was believed that competition would, in the end, regulate it; and there was a special cause why, in England, they should tenaciously cling to the conviction that competition would prevail as a regulator with English railways, for the water-ways surround that tight little island, and indent it at every point, affording means of competition utterly unknown to this vast continent. In 1867 another commission sat, still believing in competition and making no important recommendations for legal change; and it was not until 1872 that a commission, of which the Right Hon. Chichester Fortescue, now Lord Carlingford, was chairman, and of which some of the leading legislative minds of England at that time were members,—certainly some of the largest brains on questions of finance and railways, such as Mr. Cross, Lord Redesdale, the Marquis of Salisbury, Mr. Cave, who subsequently became known the world over by his connection with the Egyptian financiers, Mr.

Childers, Mr. Hunt, Lord Derby, and several others. This commission, so composed, and after taking testimony for two years, comprised in a blue-book of about 3000 pages, reported as their conclusion that every form of competition would break down in connection with a system where the railroads themselves could so readily combine, and so readily buy up the canals and influence them, and that only at certain points and during certain seasons of the year could the water-lines of the high seas actually compete with them; that, therefore, it was necessary to organize a special tribunal, known as Commissioners of Railways, for the purpose of enforcing the provisions of law which there secure the results aimed at by the resolutions offered here by Mr. Thurber, today.

The recommendation of the Committee was adopted, and a commission was called into being in 1873, with a period of existence limited to five years. There were appointed on it Mr. Edward Peel, a son of the celebrated Prime Minister; Mr. MacNamara, who, on his death, was succeeded by Mr. Miller, a lawyer, who had had considerable practice as a parliamentary railway counsel; and Mr. Price, the former chairman of the Midland Railway; so that there was combined on that commission the practical good sense which is developed in a railway office conscious of the necessity of room for the play of joints and flexibility, combined with the personal technical knowledge which accompanies and precedes so responsible an office as the chairmanship of one of the richest and best managed railways of England, the technical knowledge of a railway parliamentary lawyer in Mr. Miller, and the statesman-like views which came to Mr. Peel both as a matter of hereditary predisposition and long parliamentary experience.

That commission has from that time to this done a very great public service to the English people. No traffic arrangements can be made between two railways, nor can any railway be leased by another without the consent of the commission. All tariffs must be submitted to the commission for its approval; no changes can be made, either in the way of raising or lowering the tariff, without the previous consent of the commission, and in the event of any such change, at least three months' notice must be given to the public in advance. The necessity of notice of a change, both downward as well as upward, arises from the fact that any man who can know, two months, or a month in advance, of a change in the rate of freight, of, say, ten cents a hundred on breadstuffs from

Chicago to New York, or of petroleum between Oil City and New York, has the absolute certainty placed in his hands of making a fortune out of the people in the trade who have not that knowledge. In the evidence taken before the New York Legislative Committee, it was shown that the Standard Oil Company, by the knowledge that it had in May last, that the rate would drop from sixty cents a barrel to them to thirty cents a barrel on the 1st of June, was enabled to make several millions of dollars by selling "futures" in oil, deliverable in June, July, and August, because the rate was in their own hands and they made it. The dropping of the rate was important knowledge to them, and it was equally important that the rest of the community should not have it. The change of the rate, — for, in the power to take an unfair advantage, it makes no difference whether the rate is to be lowered or raised, — ought to be made a matter of public notice, so that all men should be placed on a par in relation to that knowledge, because the rate of freight enters into every transaction. It affects the price of every commodity, in the markets either of New York, Liverpool, Chicago, or Oil City; and, therefore, a public knowledge of any change in the rate is absolutely necessary (if any change is to take place) to protect the public from being expilated, whether the change is to be downward or upward.

The resolutions before the Board provide that there should be a special commission, or tribunal, to secure uniformity and publicity in railway accounts, and publicity of railway transactions. One of the defects of the Reagan Bill, and a defect that is shown in almost all legislation I have seen originating here in Washington, is the absence of provision for the creation of a proper Board of Commissioners. We cannot here adopt the paternal policy of continental European countries. We must adopt something a little more slow, possibly, and a little less radical, — but better adapted to our institutions. Publicity and investigation are thoroughly American methods of dealing with subjects, and I do not know whether we would require much additional legislation if that were secured. Be that as it will, in that you would have the basis for all further legislation. There are serious constitutional questions as to how far the National Government may interfere with organizations created by state authority, and which only exist and have their being under state laws, and are responsible to state organizations; but there cannot be any question that the clause in the

Constitution of the United States giving Congress the power to regulate commerce, gives it the power to investigate, and the power to insure publicity, and the power to have returns made to Congress, or to any tribunal that it may organize as to interstate commerce. If there is any portion of the power conferred by the Constitution on Congress which I would be content to see stretched to its limits, it is that of regulating interstate commerce, under which Congress may create a Board of Railroad Commissioners and give to them the power to call for books and papers, and to enter upon an investigation of the whole subject so as to secure publicity of accounts and uniformity of accounts. In my opinion that power is within the limits of the Constitution, and will remain as a protection, and as a safeguard to the people of this country. It seems to me that a bill which fails to provide for a Board of Railroad Commissioners to gather and to disseminate information, and to hear complaints, even if the power to adjudicate be denied, is defective in form, and does not give us the sort of information we should have for a future sound and wholesome railway legislative code.

The second part of the resolution offered by Mr. Thurber, provides that such a commission shall enforce provisions securing uniformity of rates and classification under like circumstances, and relative equality where circumstances differ. Upon that subject I have already spoken. The four volumes of testimony which we took in the State of New York overwhelmingly bear witness to the necessity of such provisions, and show the utter absence of either uniformity or equality of rates as to local traffic, and, until recently, as to the through traffic. The first assistant General Freight Agent of the New York Central Railroad Company, testified that ninety per cent. of the local traffic of the New York Central Company was carried at special rates, and that any tariff which claimed to be put in force was a non-existing thing which no one paid any attention to, and which did not exist at all so far as east bound traffic was concerned.

I have drawn the attention of this Board to the necessity of publicity of rates, for, in my opinion, it is better to have rates of freight high and known to all, than to have them lower but subject to sudden, personal, and arbitrary changes. For that reason it is absolutely essential that such a law shall contain a provision in regard to the publicity of rates. The next part of the resolution

deals with the question of extortion. I am a little apprehensive that extortionate charges, if equal to all, are not within the control of general legislation. They generally take place where the railway, being a single line, has the absolute power to make the charges such as it may see fit. Wherever competition prevails, there the charges are either run down by railroad wars to a very low figure, or by combination maintained at an average one.

Where the railway competes with the water way, there the interest of the railroad is to keep from charging what is called extortionate charges. Now this brings me to a question, with which I think I shall close. It is one of considerable importance. It has ordinarily been supposed that when a railway has said, "Why, we have reduced our charges far below what they have been in years past," they have made a complete answer to the claim for fair dealing on the part of the community. I do not want to state it too broadly — but it may be stated quite broadly — that within certain limitation it does not much matter what the railway charge is so long as it be uniform, and so long as the whole public are treated precisely on the same basis. We have found everywhere in this country that we were very much worse off when the railway rate went down than when it was maintained; for the rate not being calculable, resulted in converting every merchant into a speculator, and made the prices of commodities in the wholesale market absolutely without limit in fluctuation, while, when the rates were maintained, the price was governed by supply and demand. Hence it is, that an event which once would have struck this community with fear,—the combination of the railway interests which absolutely abandoned competition—was hailed with delight from one end of the land to the other, simply because it took the place of a condition of things which was absolutely and utterly intolerable.

When the rate went down to ten cents a hundred from Chicago to New York, or fifteen cents from St. Louis to New York, the rate was to some few fifteen, to some few others ten, but the main body of the commercial community were compelled to pay twenty, twenty-five and thirty cents a hundred, and the standard rate was forty and forty-five; thus inaugurating a wide-spread system of uncertainty, chicanery, fraud and personal favoritism, demoralizing trade and commerce even worse than the demoralization due to an uncertain currency, because the freight charge fluctuated more fre-

quently, even from hour to hour and day to day. Consequently, the combination which brought the rate to seventy cents a hundred, and maintains it there, is considered a God-send and a blessing, compared with the fifteen or ten cent fluctuating rates before, simply because the seventy cents is an equally distributed and calculable element.

Now this again shows the absolute analogy between the freight charge and taxation. It is of very much more importance that taxation shall be equal, says Adam Smith, than whether it be high or low, because nothing is so demoralizing as a condition of inequality of taxation; and a community can bear a very considerably heavier load of taxation if it be equally and fairly distributed, compared with a very much lower rate of taxation if the distribution is unequal and unfair.

Another question which has thrown considerable light upon the difference between the railway as a private interest and the railway as a public institution, is the fact that the railway managers themselves have discovered that they cannot carry on a competitive war in railroading with such results as prevail in ordinary commercial competition. In private enterprises, when you have carried your war to the uttermost and have ruined your rival, you have driven him out of the business, and there is an end to him; but in a railroad war, when you have ruined your rival, you have put him into the hands of a receiver, and the trains are dispatched and arrive in the same manner as before, with the difference that you have exempted your rival from the obligation to pay dividends, and have thus put him in a condition of greater and more effective rivalry than he was in at the outset of the fight!

In other words, the bankrupt roads "run wild," as the saying is, for they run to obtain operating expenses only; and the consequence is, the railway manager says: I have got to carry on this war not with a mailed hand but with a gloved hand. Because if I smash up this railway the broken pieces of it will batter in my own head. It is a boomerang of the worst possible description.

In view of these facts it is apparent that the conditions of competition in trade do not apply to an enterprise in which the results of competition are not only different from what they are in private enterprises, but in which the results are exactly the opposite.

Yet, with all these facts before us, we must be conservative in the recommendations which we make. It is unfitting this body to

adopt any but conservative propositions. We cannot forget that the mistakes made have not been mistakes by railway managers alone, but mistakes which this government and people have made. These railway managers and stockholders have, in great part, invested their money in good faith in our railway enterprises, and no injustice must be done to them. But, of course, no community can allow its hands to be tied forever because it has at one time made a legislative mistake, and hand itself over in perpetuity to arbitrary and unjust taxation because the legislatures of our States, from 1829 to 1850, were not composed of wise statesmen. Therefore, we must conservatively but surely reverse our policy and recognize the fact, and base our legislation thereon, that this is an interest not subject to the natural law of competition, but to the law of combination; that it represents a power which, as now aggregated together, is vastly larger than that represented by any other one interest in the United States; that it overshadows courts, and overshadows more especially legislative bodies, and that the community itself must, when such a power as that is consolidated, combine to meet it so that the community shall be at least as strong, in its combination known as Congress or State Legislatures, as that combination of railroads has become by its so-called pooling or traffic arrangements. Therefore, I most heartily endorse these resolutions, and trust that this Board will appoint a special committee on the subject of railway legislation, to present its views to, and press the principles contained in the resolutions on, the attention of the National Congress, or that a special committee may be appointed to meet the Committee on Commerce, which is, as I understand, to meet tomorrow, for the purpose of presenting its views to it. I believe and trust that this Board is at one with the Board of Trade and Transportation in New York:—that there is a necessity for national legislation, which necessity, however, should not at all supersede the intervention of State legislatures, in order that justice may be done within the dominion of the various States; but that the existence of a national Railway Commission will, in the exercise of its functions, furnish us so vast a fund of information, and will extend over so great a field, that it will not only be a proper adjunct and aid to State legislation, but will result in a proper constitutional amendment remitting the whole subject to Congress, so as eventually to supersede the necessity for special State action in the premises.

Several other delegates participated in the discussion, and the resolution was then adopted by an almost unanimous vote.

On the following day, the PRESIDENT and SECRETARY of the National Board of Trade, with a Committee of Delegates, appeared before the Committee on Commerce of the House of Representatives, and explained and supported the various propositions contained in the resolution.



